

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

William W. Fritsch
Appellant,

v.

Hitchcock County Board of Equalization,
Appellee.

Case No: 13R 006

Decision and Order Reversing
County Board of Equalization

GENERAL BACKGROUND & PROCEDURAL HISTORY

1. The Subject Property is a residential parcel improved with a 1,245 square foot residence and 1,440 square foot light commercial utility building located in Culbertson, Nebraska. The legal description of the Subject Property is contained in the Case File.
2. According to the Form 422 for this case, the Hitchcock County Assessor assessed the Subject Property at \$127,070 for tax year 2013.
3. William W. Fritsch (herein referred to as the "Taxpayer") protested this value to the Hitchcock County Board of Equalization (herein referred to as the "County Board"). According to the 422, the Taxpayer requested an assessed value of \$100,755 for tax year 2013.
4. According to the Form 422 for this case, the County Board determined that the assessed value of the Subject Property was \$127,070 for tax year 2013, and the Property Record Card (herein referred to as "PRC") submitted by the County at the hearing indicates that this value is allocated as follows: Land \$6,020 + Building \$121,050 = \$127,070.
5. The Taxpayer appealed the determination of the County Board to the Tax Equalization and Review Commission (herein referred to as the "Commission").
6. A Single Commissioner hearing was held on June 16, 2014, at Hampton Inn North Platte, 200 Platte Oasis Parkway, North Platte, Nebraska, before Commissioner Thomas D. Freimuth.
7. Tim Thompson, the Taxpayer's attorney, appeared at the hearing. William W. Fritsch, the Taxpayer, was also present at the hearing.
8. D. Eugene Garner, the Hitchcock County Attorney, was present for the County Board. Judy McDonald, the Hitchcock County Assessor, and Cindy McCorkle, Deputy Hitchcock County Assessor, were also present at the hearing.

SUMMARY OF HEARING DOCUMENTS & STATEMENTS

9. The PRC contains the following Subject Property valuation history:

YEAR EFFECTIVE	LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE
2013	\$6,020	\$121,050	\$127,070
2012	\$4,900	\$106,570	\$111,470
2011	\$4,480	\$96,275	\$100,755

10. As charted above, the County Board's \$127,070 determination for tax year 2013 includes \$6,020 for land and \$121,050 for the improvement components.
11. The PRC and Tab A of the County's packet, together with Judy McDonald's statements, indicate that the County Board's \$121,050 determination for tax year 2013 attributable to the Subject Property's improvement components is based on a cost approach mass appraisal model. The PRC's \$121,050 total valuation of the Subject Property's improvements is allocated as follows: \$101,735 (Residence) + \$19,315 (Other/Misc Improvements) = \$121,050.
12. Tab A of the County's packet submitted at the hearing and Judy McDonald's "Biographical Sketch" found at Tab G indicate that the State Assessment Office performed assessment functions in Hitchcock County for tax years 2001 through 2012. Ms. McDonald served as an Assessment Assistant for the State Assessment Office for tax years 2001 through 2012, and she served as the County Assessor for tax year 2013 after the Hitchcock County assessment function reverted from State to County control on July 1, 2012.
13. Page 1 of the 2013 PRC contains account notes indicating that the County Assessor's Office scheduled an appointment with the Taxpayer to inspect the Subject Property on June 20, 2013. The account notes, however, indicate that the Taxpayer did not meet with the County Assessor's Office on that day. The Taxpayer stated that he is willing to permit an inspection, but that commitments prevented him from meeting with the County Assessor's Office as scheduled on June 20, 2013.¹
14. The Taxpayer provided the Commission with PRCs for six alleged comparable properties in Culbertson, together with a chart analyzing the assessment of the utility buildings situated on these parcels in comparison to the Subject Property's utility building.
15. The Taxpayer did not dispute the County Board's valuation of the Subject Property's land component and residence component.
16. The Taxpayer asserted that the \$19,315 improvement value assigned to the Subject Property's utility building is unreasonable or arbitrary in comparison to similar buildings situated on the six properties submitted for consideration. In support of this assertion, the Taxpayer submitted photos of the Subject Property's utility building.
17. The County submitted the following documents at the hearing: (1) PRCs for the Subject Property and the County Assessor's 11 alleged comparable properties; (2) spreadsheet found at tab C that compares the 2013 assessed values of the Subject Property with the County's 11 alleged comparable properties; and (3) Effective Age Chart found at Tab E based on year built and condition; and (4) land model found at Tab F.

STANDARD OF REVIEW

18. The Commission's review of the determination of the County Board of Equalization is de novo.² "When an appeal is conducted as a 'trial de novo,' as opposed to a 'trial de novo on the record,' it means literally a new hearing and not merely new findings of fact based

¹ The Commission notes that the page prior to Tab A of the County's packet submitted at the hearing indicates that the County Assessor "was denied access by the taxpayer" for inspection purposes. The County Assessor stated at the hearing that this "denial" language was authored by Nebraska Department of Revenue staff and does not accurately reflect her interaction with the Taxpayer. Rather, the County Assessor indicated that the account notes set forth at the bottom of page 1 of the Property Record Card provide a more accurate description of the interaction between her office and the Taxpayer.

² See, Neb. Rev. Stat. §77-5016(8) (2013 Cum. Supp.), *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 286, 753 N.W.2d 802, 813 (2008).

upon a previous record. A trial de novo is conducted as though the earlier trial had not been held in the first place, and evidence is taken anew as such evidence is available at the time of the trial on appeal.”³

19. When considering an appeal a presumption exists that the “board of equalization has faithfully performed its official duties in making an assessment and has acted upon sufficient competent evidence to justify its action.”⁴ That presumption “remains until there is competent evidence to the contrary presented, and the presumption disappears when there is competent evidence adduced on appeal to the contrary. From that point forward, the reasonableness of the valuation fixed by the board of equalization becomes one of fact based upon all the evidence presented. The burden of showing such valuation to be unreasonable rests upon the taxpayer on appeal from the action of the board.”⁵
20. The order, decision, determination or action appealed from shall be affirmed unless evidence is adduced establishing that the order, decision, determination, or action was unreasonable or arbitrary.⁶
21. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁷

GENERAL EQUALIZATION LAW

22. “Taxes shall be levied by valuation uniformly and proportionately upon all real property and franchises as defined by the Legislature except as otherwise provided in or permitted by this Constitution.”⁸ Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.⁹ The purpose of equalization of assessments is to bring the assessment of different parts of a taxing district to the same relative standard, so that no one of the parts may be compelled to pay a disproportionate part of the tax.¹⁰
23. In order to determine a proportionate valuation, a comparison of the ratio of assessed value to market value for both the subject property and comparable property is required.¹¹
24. Uniformity requires that whatever methods are used to determine actual or taxable value for various classifications of real property that the results be correlated to show uniformity.¹² Taxpayers are entitled to have their property assessed uniformly and proportionately, even though the result may be that it is assessed at less than the actual value.¹³
25. The constitutional requirement of uniformity in taxation extends to both rate and valuation.¹⁴ If taxable values are to be equalized it is necessary for a Taxpayer to

³ *Koch v. Cedar Cty. Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

⁴ *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

⁵ *Id.*

⁶ Neb. Rev. Stat. §77-5016(8) (2010 Cum. Supp.).

⁷ *Omaha Country Club v. Hitchcock Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

⁸ Neb. Const., Art. VIII, §1.

⁹ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

¹⁰ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991); *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623, (1999).

¹¹ *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).

¹² *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

¹³ *Equitable Life v. Lincoln County Bd. of Equal.*, 229 Neb. 60, 425 N.W.2d 320 (1988); *Fremont Plaza v. Dodge County Bd. of Equal.*, 225 Neb. 303, 405 N.W.2d 555 (1987).

¹⁴ *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

establish by “clear and convincing evidence that valuation placed on his or her property when compared with valuations placed on similar property is grossly excessive and is the result of systematic will or failure of a plain legal duty, and not mere error of judgment [sic].”¹⁵ “There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.”¹⁶

26. “To set the valuation of similarly situated property, i.e. comparables, at materially different levels, i.e., value per square foot, is by definition, unreasonable and arbitrary, under the Nebraska Constitution.”¹⁷
27. “Misclassifying property may result, ... in a lack of uniformity and proportionality. In such an event the taxpayer is entitled to relief.”¹⁸

EQUALIZATION ANALYSIS

28. As indicated above, an order for equalization requires evidence that either: (1) similar properties were assessed at materially different values;¹⁹ or (2) a comparison of the ratio of assessed value to market value for the Subject Property and other real property **regardless of similarity** indicates that the Subject Property was not assessed at a uniform percentage of market value;²⁰ or (3) similar properties were assessed at materially different values due to misclassification of components of the Subject Property or similar components of other properties.²¹
29. For equalization analysis purposes regarding the Subject Property’s utility building, the Taxpayer submitted PRCs for six different parcels in Hitchcock County. The Taxpayer also submitted photos of the Subject Property’s utility building.
30. A review of the PRC for the Hagan Property submitted by the Taxpayer indicates that it is improved with a utility building similar to the improvement at issue on the Subject Property. According to the PRCs for the respective properties, the utility building on the Hagan parcel is classified as a Farm Utility Building, while the Subject Property’s utility building is classified as a Light Commercial Utility Building with Pole type construction.
31. The Subject Property’s PRC indicates that the utility building is rated as “1” in terms of quality and condition. It is the Commission’s understanding that “1” reflects the highest quality and condition rating available under the County’s Computer Assisted Mass Appraisal (“CAMA”) system.
32. The Nebraska Supreme Court has held: “Misclassifying property may result, . . . in a lack of uniformity and proportionality. In such an event the taxpayer is entitled to relief.”²²
33. The photographs of the Subject Property’s utility building submitted at the hearing before the Commission provide details in terms of design and characteristics. The photographs of the interior of the Subject Property’s utility building indicate a single wall construction

¹⁵ *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

¹⁶ *Id.* at 673, 94 N.W.2d at 50.

¹⁷ *Scribante v. Hitchcock County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).

¹⁸ *Beynon Farm Products Corporation v. Board of Equalization of Gosper County*, 213 Neb. 815, 819, 331 N.W.2d 531, 534 (1983).

¹⁹ See, *Scribante v. Hitchcock County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).

²⁰ See, *Cabela’s Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623, 635 (1999).

²¹ See, *Beynon Farm Products Corporation v. Board of Equalization of Gosper County*, 213 Neb. 815, 819, 331 N.W.2d 531, 534 (1983).

²² *Beynon Farm Products Corporation v. Board of Equalization of Gosper County*, 213 Neb. 815, 819, 331 N.W.2d 531, 534 (1983).

(i.e., no interior finish), concrete floors, and that the improvement was generally used for storage or as a shop for tax year 2013 purposes.

34. The Hagan Property's utility building contains interior characteristics similar to the Subject Property's utility building referenced above. In this regard, the PRC for the Hagan Property contains account notes at the bottom of page 1 indicating that Stanard Appraisal inspected the parcel on December 10, 2012.²³ The notes stemming from this inspection indicate that the improvement classified as a Farm Utility Building by the County has concrete floors, single wall construction, and is used as a shop.
35. Additionally, the photographs contained in the PRCs for both the Subject Property and the Hagan Property, together with the photos of the Subject Property's utility building submitted at the hearing by the Taxpayer, show similar exterior characteristics.
36. Marshall and Swift defines a Class D Pole Light Commercial Utility Building as having exterior characteristics that consist of "good pole frame, color siding, overhead doors, some trim[.]"²⁴ Both the Subject Property and the Hagan Property have these characteristics. Additionally, Marshall and Swift defines a Class D Farm Utility Building (the designation given to the Hagan Property by Stanard Appraisal) as having exterior characteristics that consist of stucco, siding or board siding, and sliding doors.²⁵ Marshall and Swift does not associate overhead doors with Farm Utility Buildings, and neither the Subject Property nor the Hagan Property appear to exhibit the characteristics of a Farm Utility Building.
37. For these reasons, the Commission finds that the County's classification of the Hagan Property's utility building as a Farm Utility Building is incorrect. The Commission further finds that the Hagan Property's utility building should be classified as a Light Commercial Utility Building.
38. Taxpayers are entitled to uniform and proportionate assessment of property, even though the result may be that it is assessed at less than actual value.²⁶ The Commission does not possess the authority to increase the value of a property not in dispute, and to do so without notice to the other owner would violate the principle of due process. The only available method to address the equalization problem stemming from the misclassification identified herein is to value the utility buildings on the Subject Property and the Hagan Property in a similar manner.
39. The Commission finds that the County Board's determination of the actual value of the Subject Property's utility building for tax year 2013 is unreasonable or arbitrary because misclassifying property has resulted in a lack of uniformity and proportionality.²⁷
40. The Commission finds that the actual equalized value of the Subject Property's utility building reclassified as a Farm Utility Building for tax year 2013 is \$13,760.²⁸

²³ The County Assessor stated that Stanard Appraisal is the County's contract appraiser. The County Assessor stated that she could not comment regarding the details and conclusions stemming from the work performed by Stanard Appraisal.

²⁴ *Marshall Valuation Service*, Marshall & Swift/Boeckh, LLC, (5/2013), Section 17 at p. 12.

²⁵ *Marshall Valuation Service*, Marshall & Swift/Boeckh, LLC, (5/2013), Section 17 at p. 26.

²⁶ *Equitable Life v. Lincoln County Bd. of Equal.*, 229 Neb. 60, 425 N.W.2d 320 (1988); *Fremont Plaza v. Dodge County Bd. of Equal.*, 225 Neb. 303, 405 N.W.2d 555 (1987).

²⁷ See, *Beynon Farm Products Corporation v. Board of Equalization of Gosper County*, 213 Neb. 815, 819, 331 N.W.2d 531, 534 (1983)

²⁸ The reclassified equalized value as a Farm Utility Building is calculated as follows, using *Marshall Valuation Service*, Marshall & Swift/Boeckh, LLC, (5/2013), Section 17 at pgs. 26 & 60 (assumes that quality, condition, and depreciation factors do not change): Base Value of \$10 per square foot x 1.044 Perimeter Adjustment x 1.077

41. Therefore, the Commission finds that the rounded equalization value of the Subject Property for tax year 2013 is \$121,515 (Land \$6,020 + Residence \$101,735 + Utility Building \$13,760 = \$121,515).

CONCLUSION

42. The Taxpayer has produced competent evidence that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions.
43. The Taxpayer has adduced sufficient, clear and convincing evidence that the determination of the County Board is unreasonable or arbitrary and the decision of the County Board should be vacated and reversed.

ORDER

IT IS ORDERED THAT:

1. The Decision of the Hitchcock County Board of Equalization determining the value of the Subject Property for tax year 2013 is vacated and reversed.
2. That the taxable value of the Subject Property for tax year 2013 is:

Land	\$ 6,020
Improvements	\$ 115,495
Total	\$ 121,515

3. This decision and order, if no further action is taken, shall be certified to the Hitchcock County Treasurer and the Hitchcock County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2013 Cum. Supp.).
4. Any request for relief, by any party, which is not specifically provided for by this order is denied.
5. Each Party is to bear its own costs in this proceeding.
6. This decision shall only be applicable to tax year 2013.
7. This order is effective on October 27, 2014.

Signed and Sealed: October 27, 2014.

Thomas D. Freimuth, Commissioner

Height Adjustment = \$11.24 adjusted base value. $\$11.24 \times 1440 \text{ (area)} = \$16,185.60$ Replacement Cost New ("RCN"). $\text{RCN } \$16,185.60 \times .85 \text{ (less 15\% depreciation)} = \$13,760$ rounded RCN less depreciation.